

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

January 30, 2009

Theodore M. Morris
SBI No.
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

James D. Nutter, Esquire
Eric Mooney, P.A.
11 S. Race Street
Georgetown, DE 19947

Adam D. Gelof, Esquire
Department of Justice
114 E. Market Street
Georgetown, DE 19947

RE: State of Delaware v. Theodore M. Morris
Def. ID No. 0411013777
Letter Memorandum

Date Submitted: September 26, 2008

Dear Mr. Morris and Counsel:

This is my decision on Theodore M. Morris' motion for postconviction relief. The State of Delaware charged Morris with four counts of Rape in the First Degree, three counts of Sexual Exploitation of a Child, three counts of Endangering the Welfare of a Child, and Possession of Child Pornography and Incest. The charges arose out of Morris' rape of his 17 month-old-son (the "Victim"). Morris recorded the crimes on a videotape. The Victim's mother identified Morris as the man on the videotape raping the Victim. Morris confessed to the police that he raped the Victim. Morris pled guilty to two counts of Rape in the First Degree and one count of Sexual Exploitation of a Child. The State nolle prossed the other charges. I sentenced Morris to two life sentences plus

25 years. Morris was represented by James D. Nutter, Esquire.

This is Morris' first motion for postconviction relief and he filed it in a timely manner. Therefore, there are no procedural bars to his motion for postconviction relief.¹ Morris alleges that Nutter was ineffective because (1) he did not suppress the videotape, (2) he did not suppress his confessions, and (3) he was convinced that Morris was guilty. In order to prevail on his claim of ineffective assistance of counsel, Morris must show (1) that Nutter's actions fell below an objective standard of reasonableness; and (2) there exists a reasonable probability that, but for Nutter's errors, Morris would not have pled guilty.² Mere allegations of ineffectiveness will not suffice. Morris must make specific allegations of actual prejudice and substantiate them.³ Moreover, any review of Nutter's representation is subject to a strong presumption that his representation of Morris was professionally reasonable.⁴ Nutter has submitted an affidavit responding to Morris' allegations.

The Videotape

Morris alleges that he was not the man on the videotape raping the Victim and that Nutter should have suppressed it. Morris, the Victim's mother, and the Victim lived in a motel room. The Victim's mother found the videotape in the motel room and gave it to the police. Thus, there was no legal basis to suppress the videotape and Morris does not offer one. The Victim's mother identified Morris as the man on the videotape raping the Victim. Whether or not it was actually

¹ *Younger v. State*, 580 A.2d, 554 (Del. 1990).

² *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

³ *Wright*, 671 A.2d at 1356; *Younger v. State*, 580 A.2d at 555-56.

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

Morris was a question of fact for the jury. However, as Nutter points out in his affidavit, it seems unlikely that the man could be anyone else but Morris, particularly since Morris was the person caring for the Victim while the Victim's mother was at work.

I. The Confessions

Morris alleges that Nutter should have moved to suppress his confessions because they were not voluntary. Morris confessed to the police twice on the night of his arrest. The police videotaped his confessions. Morris does not say what the police did, other than telling him that he was the man on the videotape raping the Victim, to overcome his will and make him confess.⁵ As such, the allegations by Morris are conclusory and without merit.

II. Nutter's Assessment of the Case

Morris alleges that Nutter was convinced that he was guilty and only interested in obtaining a plea offer from the State. In this regard, Nutter was only being candid with Morris about the evidence against him and his chances at trial.⁶ The evidence against Morris was overwhelming. The State had a videotape of Morris raping the Victim. The Victim's mother was prepared to testify that it was Morris on the videotape. Morris confessed twice to raping the Victim. The videotape of the rapes, which I watched before sentencing, was absolutely horrific. I can find nothing wrong with Nutter's assessment of the strength of the State's case against Morris. The mere fact that Nutter correctly believed that the State had an extremely strong case against Morris does not mean that Nutter did not effectively represent Morris.

⁵ *State v. Bright*, 683 A.2d 1055, 1059 (Del. Super. 1996).

⁶ Del. Lawyers' Rule of Prof'l Conduct R.2.1.

CONCLUSION

Theodore M. Morris' motion for postconviction relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office